United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 10-2044**
	)	**Issued: August 22, 2011**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION & CUSTOMS ENFORCEMENT, Los Angeles, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2010 appellant filed a timely appeal from a March 4, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying appellant's claim for compensation for memory loss and dementia. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that his claimed memory loss and dementia were causally related to the January 12, 1988 employment injury.

[1] 5 U.S.C. § 8101 *et seq.*

On appeal, appellant contends that OWCP engaged in elder abuse and took unfair advantage of his diminished capacity.[2]

FACTUAL HISTORY

On January 12, 1988 appellant, then a 48-year-old special agent, filed a traumatic injury claim alleging that he sustained an injury to his back on that date when he was in an employment-related motor vehicle accident. A vehicle failed to stop for a stop sign and collided with the government vehicle he was driving.

In a January 14, 1988 report, Dr. Michael Jaffin, an orthopedic surgeon, noted that appellant had cephalgia, lumbar syndrome and elevated blood pressure. He noted that appellant's headache might be the result of direct trauma to his forehead and particularly worrisome as it was accompanied by the blurring of vision and dizziness.[3] In a January 22, 1988 report, Dr. Jaffin noted that appellant was treated for frontal scalp headaches characterized by spasmodic brief episodes occurring irregularly and subsiding spontaneously. He noted that the headaches were not currently present. In a January 25, 1988 report, Dr. Jaffin noted that appellant's cephaliga had improved. On November 2, 1988 he noted that appellant was totally disabled due to his lumbar radicular syndrome.

In a January 22, 1988 report, Dr. Lord Lee-Benner, a Board-certified psychiatrist, noted a history that appellant was injured in a motor vehicle accident on January 12, 1988 when he struck the front part of his head but appellant did not recall any loss of consciousness or becoming dazed and confused. Although no immediate medical attention was administered, Dr. Lee-Benner advised that appellant stated his headaches began that evening and persisted daily for the first week, associated with feelings of stress. He noted that appellant had no headaches at the present time. Dr. Lee-Benner diagnosed post-traumatic stress (PTS) reaction, muscle tension headaches secondary to PTS reaction and status post contusion to the frontal scalp area, improved.

In a February 27, 1989 report, Dr. John W. Conley, a Board-certified neurosurgeon, noted that appellant denied headaches or dizziness.

OWCP accepted appellant's claim for lumbosacral strain and cephalgia. It paid medical and compensation benefits.

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[2] On appeal, appellant submitted new medical evidence. However, the Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

[3] Appellant also has numerous other claims that were accepted by OWCP. On June 22, 1978 appellant was in a work-related automobile accident and OWCP accepted this claim for musculoligamentous strain of the cervical spine and contusion of the right knee with mild chondromalacia. OWCP File No. xxxxxx925. On May 14, 1979 appellant was exiting a van when he came down too hard on his left foot causing soreness. OWCP accepted appellant's claim for severe bone bruise and capsulitis of the left metaphalangeal joint of the left foot. OWCP File No. xxxxxx252. On September 12, 1985 appellant was chasing a fleeing alien when he collided with a truck. OWCP accepted the condition of right shoulder contusion as work related. OWCP File No. xxxxxx012. OWCP also accepted that on May 26, 1993 appellant sustained a lumbar strain and herniated disc when he went to the supply room to get a box of books and that when he lifted the box he experienced a sharp pain in his back. OWCP File No. xxxxxx805.

Appellant stopped work immediately after the injury and returned to work on January 7, 1994 for six hours a day, light duty. He stopped work again on March 22, 1994 and returned to modified duty on May 30, 1996. Appellant stopped work again on June 6, 1996 and did not return.

The record contains correspondence between appellant, his congressman and OWCP. In a September 25, 2008 letter, appellant contended that he had age-related memory issues and that his ability to think quickly and respond had been diminished. Appellant asked his congressman's assistance with his claim. OWCP responded to the congressman's inquiry by letter dated October 7, 2008. It noted that in cases of prolonged disability, the claims examiner was responsible for periodic review and that medical evidence must be obtained at a minimum of once a year.

By letter dated July 13, 2009, appellant stated that for several years he had sustained memory loss, especially with short-term memory loss, and was losing his ability to pay attention and concentrate. He also indicated that his ability to think, read and respond quickly had diminished. Appellant saw a physician who informed him that computerized tomography (CT) and magnetic resonance imaging (MRI) scans showed ischemic changes to the frontal lobe which the doctor explained was a traumatic brain injury that was caused by striking or hitting the head.

On July 27, 2009 OWCP advised appellant to submit additional medical reports demonstrating that his memory loss was related to the January 12, 1988 employment injury. Appellant submitted an August 4, 2009 report by Dr. Jacob E. Tauber, a treating Board-certified orthopedic surgeon, who stated that appellant was permanently and totally disabled and could not realistically carry out work activities. Dr. Tauber also discussed appellant's low back pain and limited lumbar motion. He also noted that appellant had pain on cervical motion and positive straight leg raising with diffuse weakness in his lower extremities.

By decision dated November 2, 2009, OWCP denied appellant's claim for a consequential condition of dementia or memory loss.

By letter dated November 30, 2009, appellant requested reconsideration. He submitted new evidence and resubmitted the January 14, 1998 report of Dr. Jaffin and January 22, 1988 report of Dr. Lee-Benner.

In a July 14, 2009 report, Dr. Luis A. Chui, a Board-certified neurologist, stated that appellant had memory deficit, especially with regard to recent events. He noted that appellant did not appear to have Alzheimer's disease, and recommended neuropsychological testing, including a sleep study because chronic sleep apnea can lead to memory and cognitive impairment.

An MRI scan test of the brain and brain stem conducted on June 25, 2009 was interpreted by Dr. Johnny Chingyek Soong, a Board-certified radiologist, as showing asymmetry in the side of the frontal horns of the lateral ventricle, right smaller than left and minimal small vessel ischemic change in the frontal lobe white matter. Dr. Soong diagnosed mild thickening of the ethnoid sinus and deviation of the nasal septums to the left.

A CT scan of the head on June 19, 2009 was interpreted by Dr. Judy Shinyoung Choe, a Board-certified radiologist as showing diffuse mild cortical atrophy, 1.3 x 1.8 centimeter mass likely in the region of the right thalamus with mass effect into the right ventricle.

In a September 18, 2009 report, Dr. Barry L. Marks, a chiropractor, diagnosed memory impairment and cephalgia secondary to postconcussion syndrome due to frontal head injury in the motor vehicle accident of January 12, 1988. He stated that appellant's complaints of memory loss and headaches were a continuation and worsening of the original head injury that OWCP had accepted.

In an October 1, 2009 report, Dr. Aaron R. Allen, a Board-certified neurologist, conducted a physical examination and reviewed appellant's medical and work history. He noted that appellant experienced difficulties with memory, particularly his short-term memory. Dr. Allen noted that disturbances in memory and cognition had many different sources and that head trauma had been identified as such a source in medical literature. Based on the examination, appellant's history and review of documentation, it was Dr. Allen's opinion that the head trauma appellant sustained in the course of his employment was directly related to his current memory disturbance and headaches.

In a December 10, 2009 report, Dr. Lawrence R. Miller, a Board-certified internist, diagnosed appellant with status post closed-head injury with post-traumatic head syndrome with memory loss and chronic headache; advanced cervical spondylosis with right cervical radiculopathy; advanced lumbar spondylosis with right lumbar radiculopathy; and bilateral shoulder internal derangement and osteoporosis.

By decision dated March 4, 2010, OWCP denied modification of its November 2, 2009 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.[4] To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical

[4] *Jaja K. Asaramo*, 55 ECAB 200 (2004); *see also A.E.*, Docket No. 10-1862 (issued May 11, 2011).

[5] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

background of the claimant, must be one of reasonable medical certainty and must be supported by rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7] Neither the fact that a disease or condition manifests itself during a period of employment; nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[8]

ANALYSIS

Appellant filed a claim for an injury resulting from an employment-related motor vehicle accident that occurred on January 12, 1988. OWCP accepted his claim for lumbosacral strain and cephalgia. On September 25, 2008, over 20 years after injury, appellant claimed dementia and memory loss as a result of the January 12, 1988 employment injury. The Board finds that OWCP properly denied his claim as the medical evidence is not sufficient to establish causal relation.

Medical reports contemporaneous with appellant's accepted employment injury indicate that appellant struck his forehead during the accident. In a January 14, 1988 report, Dr. Jaffin noted that appellant had headaches that were accompanied by blurring of vision and dizziness. In a January 22, 1988 report, he noted that appellant complained of frontal scalp headaches characterized by spasmodic brief episodes occurring irregularly and subsiding spontaneously. As of that date, Dr. Jaffin noted that the headaches were not currently present. In a report of the same date, Dr. Lee-Benner obtained a history that appellant struck his head in the motor vehicle accident but did lose consciousness or become dazed or confused. Although appellant had headaches for the first week after the accident, there were no headaches at that time. In a January 25, 1988 report, Dr. Jaffin noted that appellant's cephalgia had improved. On November 2, 1988 he made no mention of any headaches. In a February 27, 1989 report, Dr. Conley indicated that appellant denied headaches or dizziness. Accordingly, the medical reports obtained following appellant's motor vehicle accident establish that appellant's headaches were treated and had subsided after several weeks. There is no indication that they were still present when he saw Dr. Jaffin on November 2, 1988. These reports establish that appellant's complaint of headaches and blurred vision resolved by late 1988.

In 2008 appellant contended that he sustained memory loss and dementia due to his employment-related automobile accident. In order to establish a causal relationship between the January 12, 1988 employment injury automobile accident and appellant's claim of dementia and memory loss in 2008, appellant has the burden to submit rationalized medical reports.[9]

The Board finds that the medical evidence submitted by appellant does not establish causal relationship. The Board notes that there is no medical evidence of bridging symptoms

[7] *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[9] *Leslie C. Moore*, *supra* note 7.

that address dementia or memory loss from 1988 to 2008.[10] During this 20-year period, there is no evidence of any physician treating appellant for any head trauma-related condition. Appellant continued to work until 1996 without evaluation or treatment of head trauma issues. The absence of such evidence and his apparent ability to work until 1996 mitigates against the existence of the January 12, 1988 injury causing dementia or memory loss.[11]

With regard to the contemporary medical evidence, Drs. Soong and Choe discussed diagnostic studies; however, the physicians did not address causal relationship. Dr. Tauber did not render any opinion with regard to appellant's headaches, dementia or memory loss. Dr. Chui noted that appellant had memory deficit but did not relate this condition to appellant's January 12, 1988 employment injury. Dr. Miller noted that appellant had a closed-head injury with post-traumatic head syndrome with memory loss and chronic headaches, but he did not provide a fully rationalized medical opinion linking these headaches to the employment-related injury. He did not address the history from 1988 to 2008 as it pertained to any medical treatment appellant may have received. Dr. Marks, a chiropractor, diagnosed memory impairment and cephalgia secondary to postconcussion syndrome due to the January 12, 1988 motor vehicle accident, but his opinion is entitled to no weight. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[12] Dr. Marks' opinion with regard to memory impairment and cephalgia is not treatment of the spine or of a spinal subluxation.

Dr. Allen concluded that appellant sustained a head trauma in the course of his employment directly causally related to his current memory disturbance and headaches. He explained that disturbances in memory and cognition may have different sources and that head trauma has been identified as a source in medical literature. The Board notes the fact that head trauma may be a source of memory and cognition issues is not sufficient reason, without further rationale to establish that the fact that appellant experienced memory loss and dementia as a consequence of the accepted employment injury. Dr. Allen did not provide a full or accurate history of treatment or lack thereof over the 20 years from 1998 to 2008. He found that appellant's development of dementia and memory loss problems was related to the accepted injury without providing a well-rationalized report. Dr. Allen failed to address that stenosis in appellant's carotid arteries or the significance of the diagnostic test results and Meniere's disease on the diagnosis of dementia. He may have based his opinion, in part, on the report and opinion of Dr. Marks, who is not a physician under FECA.

Accordingly, the Board finds that appellant has not submitted sufficient rationalized medical evidence to establish that he suffered from dementia and memory loss causally related to his accepted employment injury of January 12, 1988.

[10] *See R.L.*, Docket No. 09-714 (issued January 4, 2010); *M.C.*, Docket No. 09-393 (issued October 9, 2009).

[11] *M.J.*, Docket No. 08-2549 (issued July 9, 2009).

[12] 5 U.S.C. § 8101(2); *Merton J. Sills*, 30 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal.

CONCLUSION

The Board finds that appellant has not established that his claimed memory loss and dementia were causally related to the January 12, 1988 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2010 is affirmed.

Issued: August 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board